

## DATA COLLECTION AND USE AGREEMENT

This DATA COLLECTION AND USE AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_, 2013, by and between Medical Research Analytics and Informatics Alliance, an Illinois not-for-profit corporation (“MRAIA”) and \_\_\_\_\_ (“Provider”) and jointly (“Parties”).

WHEREAS, MRAIA has entered into a Data Confidentiality and Release Agreement (the “Contract”) with the Illinois Department of Public Health (“IDPH”) dated May 23, 2012 pursuant to which MRAIA will act as an agent of IDPH to assist IDPH in the collection of Electronic Laboratory Data, immunization data, and syndromic surveillance data using the public health and software certified for meaningful use and to otherwise support IDPH is exercising its responsibilities related to data collection for public health purposes;

WHEREAS, IDPH is a “public health authority” under the Health Insurance Portability and Accountability Act (“HIPAA”) as amended and including the Privacy Rule, Security Rule, Enforcement Rule, and Breach Notification Rule as promulgated under HIPAA, (jointly the “HIPAA Rules”);

WHEREAS, IDPH is authorized by law and under HIPAA and HIPAA Rules to collect or receive health information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions;

WHEREAS, Provider is a “covered entity” under HIPAA and the HIPAA Rules;

WHEREAS, HIPAA and the HIPAA Rules expressly provide that a covered entity may disclose protected health information (“PHI”) for public health activities and purposes without patient authorization;

WHEREAS, HIPAA and the HIPAA Rules additionally provide that the covered entity’s disclosure of PHI for public health activities and purposes may be to a “public health authority” that is authorized by law to collect or receive such information;

WHEREAS, HIPAA and the HIPAA Rules define a “public health authority” as:

Public health authority means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

45 CFR section 164.501 (emphasis added);

WHEREAS, MRAIA is acting under the IDPH Contract and the Contract grants MRAIA authority to act as an agent of IDPH with respect to public health matters that are a part of IDPH's official mandate;

WHEREAS, Provider desires to disclose the Data (as defined herein) to MRAIA to be used by MRAIA in its performance under the IDPH Contract; and

WHEREAS, MRAIA agrees to protect the privacy of the Data (as defined herein) in accordance with the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**1. Purpose.** The purpose of this Agreement is to allow Provider to share with MRAIA its patient data in order for MRAIA to carry out its contractual obligations as set forth under the IDPH Contract and related public health activities, including but not limited to producing information for the benefit of Provider and Provider's patients.

**2. Obligations of Provider.**

2.1 Minimum Necessary Information. MRAIA shall only request and Provider shall only provide, the Minimum Necessary health information necessary for MRAIA to carry out its obligations under the IDPH Contract and this Agreement (the "Data"). For purposes of this Agreement, the Minimum Necessary health information will include:

2.2 Accuracy. Provider shall use its best efforts to ensure that Data submitted to MRAIA by it or on its behalf are true, accurate and complete.

2.3 Notice of Inaccuracy. Provider shall provide notice to MRAIA of any potentially erroneous and/or missing information or data with respect to Data previously reported to MRAIA by or on behalf of Provider.

2.4 Corrections. Provider shall provide corrected or corroborating information or data in the event that Provider has reason to believe any information contained in Data previously submitted to MRAIA is not true, accurate, or complete.

2.5 Cooperation. Provider will cooperate with MRAIA in resolving any problems with Data. MRAIA may further require Provider to comply with reasonable quality assurance procedures to assure the validity and integrity of Data.

### **3. Obligations of MRAIA.**

3.1 MRAIA Utilization of Data. MRAIA may use and disclose the Data received from Provider only in connection with sending Electronic Laboratory Reporting data to the Illinois Department of Public Health (the "Services").

3.2 Nondisclosure of Data. Except as provided in this Agreement, MRAIA shall not use or further disclose the Data except as permitted or required by this Agreement.

3.3 Re-Identification. MRAIA may not use the Data to identify or contact any individual who is the subject of the health information from which the Data was created.

3.4 Disclosure. MRAIA may disclose the Data to a third party to carry out the Services. In addition, MRAIA will comply with valid orders of a court or other federal or state official action compelling disclosure and as otherwise required by law.

3.5 Safeguards. MRAIA shall use appropriate safeguards to prevent the unauthorized use or disclosure of the Data other than as provided by this Agreement.

3.6 MRAIA's Agents. MRAIA may disclose the Data to an agent or subcontractor of MRAIA. MRAIA will enter into a written agreement with each agent or subcontractor that requires each to comply with the terms and conditions set forth in this Agreement.

3.7 No Re-Identification. MRAIA will not attempt to re-identify any Data.

3.8 Reporting. MRAIA shall report to Provider within Ten (10) days of MRAIA becoming aware of any use or disclosure of the Data in violation of this Agreement.

#### **4. Termination.**

4.1 Term. This Agreement shall be effective as of the Effective Date and shall continue until the Agreement is terminated in accordance with the provisions of this Section.

4.2 Termination. Either Party may terminate this Agreement:

4.2.1 Due to a material breach of any term or provision of this Agreement by the other Party upon written notice of such breach to the breaching Party, and the failure of the breaching Party to cure such breach within thirty (30) days of receiving such written notice. If such breach is of such character as to reasonably require more than thirty (30) days to cure, then this Agreement may be terminated only if the breaching Party fails to commence action within such thirty (30) days to cure the breach and proceed to use reasonable diligence to cure the breach until it has been fully remedied.

4.2.2 At any time without cause upon one hundred eighty (180) days' prior written notice to the other Party.

4.3 Effects of Termination. Upon termination of this Agreement for any reason, no party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made to extend beyond the Term.

4.3.1 Upon termination of this Agreement for any reason, MRAIA shall return or destroy, as specified by Provider, the Data that MRAIA obtained from Provider that MRAIA still maintains in any form, and shall retain no copies of such Data. If Provider, in its sole discretion, requires that MRAIA destroy the Data, MRAIA shall certify to Provider that the Data has been destroyed. If return or destruction is not feasible, MRAIA shall inform Provider of the reason it is not feasible and shall continue to extend the protections of this Agreement to such Data and limit further use and disclosure of such Data to those purposes that make the return or destruction of such Data infeasible. Provider acknowledges that once MRAIA has transmitted the Data to a third party, including IDPH, it no longer controls such Data and cannot return or destroy such Data.

4.3.2 Each Party shall indemnify, hold harmless and defend the other from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of such Party in connection with the representations, duties and obligations of the Party under this Agreement. The Parties' respective rights and obligations under this Section 4.3.2 shall survive termination of the Agreement.

## **5. Miscellaneous Terms.**

5.1 Governing Law. This Agreement shall be enforced in accordance with the laws of the State of Illinois.

5.2 Waiver. No delay or omission by any party to exercise any right or remedy under this Agreement shall be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

5.3 Force Majeure. No party shall be liable or be deemed in default of this Agreement for any delay or failure to perform caused by Acts of God, war, terrorist acts, disasters, strikes or any similar cause beyond the control of the other Parties.

5.4 Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement shall continue in effect.

5.5 Modification or Termination Upon Advice of Counsel. If at any time either party reasonably believes in good faith based upon the advice of reputable health

care counsel that this Agreement or the performance by that party of any of its obligations under this Agreement violates any material law or regulation, state or federal, presents a substantial risk of the loss or restriction of that party's license, tax exemption or right to participate in Medicare, Medicaid or any other governmental program, or presents a substantial risk of causing debt issued by that party that was tax-exempt when originally issued to become subject to federal or state income tax, then that party may, upon written notice, require the other party to enter into good faith negotiations to renegotiate the terms of this Agreement, in a manner that attempts to retain as much as possible of the economic arrangements originally contemplated by the Parties without violating any applicable legal, tax or reimbursement requirements. If the Parties are unable to reach an agreement concerning the modification of this Agreement within sixty (60) days after the date of the notice seeking renegotiation (or sooner if required by law), then either party may immediately terminate this Agreement by written notice to the other Parties. The rights of the Parties under this Section are in addition to any other termination rights the Parties may have under this Agreement.

5.6 Access to Books and Records. Until the expiration of four (4) years after the furnishing of services under this Agreement, MRAIA agrees to make available to the Secretary of Health and Human Services, the U.S. Comptroller General and their representatives this Agreement and all books, documents and records necessary to certify the nature and extent of the costs of the Services. If MRAIA carries out the duties of this Agreement through a subcontract worth Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization, the subcontract shall also contain an access clause to permit access by the Secretary, Comptroller General and their representatives to the related organization's books and records.

5.7 Assignment. Neither Provider nor MRAIA may assign this Agreement without the written consent of the other party, which shall not be unreasonably withheld.

5.8 Amendments. This Agreement may not be modified in any respect other than by a written instrument signed by both Parties.

5.9 Entire Agreement. This Agreement supersedes any previous contracts between the Parties and constitutes the entire agreement between the Parties. All Parties acknowledge that any statements or documents not specifically referenced and made a part of this Agreement shall not have any effectiveness.

5.10 Counterparts. This Agreement may be executed in counterparts and each counterpart shall be deemed an original.

5.11 Incurring Financial Obligation. MRAIA shall have no authority whatsoever to incur any financial obligation on behalf of Provider and Provider shall have no authority whatsoever to incur any financial obligation on behalf of MRAIA.

5.12 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the making or interpretation of this Agreement.

5.13 Notices. All notices required or permitted hereunder will be given in writing by personal delivery or by certified mail, postage prepaid, by nationally recognized overnight courier service, or by electronic communication to the Parties at the following addresses or at such other places as a party may designate in writing:

If to MRAIA:

MRAIA

Attention: Dr. William Trick

\_\_\_\_\_  
\_\_\_\_\_

and:

Gerald "Jud" E. DeLoss

Popovits & Robinson

20635 Abbey Woods Court

Suite 301

Frankfort IL 60423

If to Provider:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.14 Indemnification, Limitation and Hold Harmless. Under no circumstances shall MRAIA or Provider be liable for any damages (including, without limitation, incidental and consequential damages, personal injury/wrongful death, lost profits, or

damages resulting from lost data or business interruption) arising out of or related to this Agreement, whether based on warranty, contract, state law, federal law, tort or any other legal theory, and whether or not Provider or MRAIA, as the case may be, is advised of the possibility of such damages. Provider agrees to hold harmless MRAIA, and any of its affiliated entities, and their officers, directors, employees and agents from and against all claims, actions, demands, liabilities, judgments and settlements, including, without limitation, from any direct, indirect, incidental, consequential, special, exemplary, punitive or any other claim Provider may incur including, without limitation, any medical malpractice or professional liability, economic harm, lost profits, damages to business, data or computer systems, or any damages resulting from reliance on any content or resulting from any interruptions, work stoppages, computer failures, deletion of files, errors, omissions, inaccuracies, defects, viruses, delays or mistakes of any kind. In no event will MRAIA's liability or exposure under this Agreement exceed the amount paid by Provider to MRAIA for the services performed by MRAIA on behalf of Provider on an annual basis. If any of the provisions of this Section are held unenforceable by a court or other tribunal of competent jurisdiction, then those provisions shall be limited or eliminated to the minimum extent necessary to allow the remainder of this disclaimer to retain its full force and effect. THESE SERVICES ARE PROVIDED TO PROVIDER AND MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY AS TO AVAILABILITY, NOW OR IN THE FUTURE, EXPRESS OR IMPLIED. RELIANCE ON ANY INFORMATION PROVIDED IS SOLELY AT PROVIDER'S OWN RISK. The Parties' respective rights and obligations under this Section 5.14 shall survive termination of the Agreement.

5.15 Survival. If any term or condition of this Agreement contemplates action or inaction by the Parties, such term or condition shall survive termination of this Agreement and the Parties or Party will abide by such term or condition regardless of any termination of the Agreement.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first set forth above.

**MRAIA:**

**Provider:**

Medical Research Analytics and  
Informatics Alliance

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_